Board, the time is ripe for the full Commission to rescind the hearing order issued three and one-half years ago in April 1993. Nevermind that the order was issued by the full Commission itself. Also nevermind that the point of the present motion, i.e., that minority preference programs of which Trinity took advantage are immune to the de facto control laws, was repeatedly argued before the full Commission before it rejected those arguments and designated the de facto control hearing issues.

37. The motion seeks to rescind those issues as "improvidently" designated. Trinity's real problem is that the agency's designation of those issues was most "provident" indeed. The prima facie case of de facto control and manipulation of the minority preference programs on the part of Trinity, leading to the designation order, has been thoroughly documented and conclusively proven in the evidentiary process.

38. None of the cases cited by Trinity, at 17-18, supports a grant of its motion:

(a) In WOIC, Inc., 39 FCC2d 355, 26 RR2d 790 (1973), 44 FCC2d 891, 29 RR2d 363 (1974), motion at 17, the full Commission designated assignment and renewal applications for hearing, based on the incumbent's response to allegations that was procedural in nature and did not address the merits of the allegations. When the incumbent changed counsel and addressed the merits of the allegations, the full Commission was persuaded that the hearing was not necessary, deleted the issues and granted the applications. Here, Trinity argued its case for immunity from de

facto control laws prior to the hearing designation order on two occasions: first, in the request for a declaratory ruling filed by Trinity's NMTV: and, second, in response to petitions to deny Trinity's instant license renewal application for WHFT in Miami, Florida.

(b) In United Broadcasting Company, 93 FCC2d 482, 53 RR2d 57, 66-68 (¶¶19-25) (1983), motion at 17, a license renewal proceeding, the Review Board had designated an issue regarding the incumbent's compliance with the fairness doctrine and, after the case was heard and came before the full Commission for decision, the full Commission held that the issue should not have been designated or heard because the proponent of the issue had pleaded only general allegations and not specific allegations required to support the designation. Here, there were many many specific allegations of de facto control supporting the designation of issues against Trinity on that score.

(c) In Scott & Davis Enterprises, Inc., 88 FCC2d 1090, 50 RR2d 1251 (1982), motion at 17, the Review Board held that an ALJ shouldn't have added or heard a Section 1.65 issue because the subject matter (failure to report an application for increase in power) was not decisionally significant. For the Review Board to reverse an ALJ in such a fashion, and to a lesser extent, for the full Commission to reverse the Review Board in such a fashion, is, and has been, a routine part of the administrative hearing process at the FCC. The Scott & Davis case is neither factually nor legally relevant to the position of Trinity here.

(d) In Southern Broadcasting Co., 40 FCC2d 1109, 27 RR2d 845 (1973), motion at 17, n. 6, the full Commission entertained an interlocutory appeal from action by the Review Board adding a hearing issue regarding programming "promise vs. performance" and deleted the issue because the Board had made a "clear error" in its misunderstanding of the programming statistics which, when corrected, removed the basis for the issue. Here, there has been no error at all, much less a clear one. Trinity's arguments have repeatedly been made and repeatedly rejected. The embellishments on those arguments do not substantively change the premises on which the full Commission designated the de facto issues against Trinity and on which the case has been tried.

(e) In Western Union Telegraph Company, 59 FCC2d 1508 (1976), motion at 17, n. 6, the full Commission designated a rate increase for hearing in the belief that it might raise the rate of return beyond acceptable limits, and then cancelled the hearing when evidence in another proceeding demonstrated that the rate of return would be 6.5%, well below the acceptable limits of 7.5% to 8.0%. Another "clear error" case that is inapposite here.

(f) In City of Brownsville, Tex., 12 FCC2d 527 (1968), motion at 17, n. 6, the full Commission cancelled a comparative hearing by applicants for an aeronautical radio station license which one of the contending parties had previously held because, on further reconsideration, it restored that party's license in good standing. A position in which Trinity no doubt would like

to find itself. But doesn't on the enormous record of its misconduct now before the agency for final decision.

(g) All America Cables and Radio, Inc., 69 FCC2d 1650 (1978), also is inapposite. The Review Board, at first, designated an issue in the proceeding and then withdrew the issue on the jurisdictional ground that the case was in the nature of a rule making proceeding (relating to the number of domestic satellite services between Puerto Rico and the USA mainland) for which the Board did not have the power to designate issues. The power and jurisdiction of the full Commission to designate the hearing issue, of course, is unquestionable.

39. The motion should be denied or dismissed as an unauthorized pleading that provides no basis for the Commission to reconsider its hearing designation order on the eve of arriving at a final decision in this proceeding.

V.

The entire motion is premised on reopening the record to receive two items of evidence that are a decade old dating back to 1985 and 1987

40. The centerpieces of Trinity's entire motion are two items, i.e., a transcript of a Commission meeting and a declaration by a former FCC staff member, Mr. Glasser. To reopen a record to receive additional evidence after the Judge's decision has been rendered and the matter is ripe for final agency decision, a heavy "good cause" burden must be met, i.e., that the need for the evidence could not have reasonably been foreseen at the time of the hearing, that the evidence could not be obtained until now and that the moving party has been diligent

in coming forward with the proffered evidence under the circumstances, notwithstanding the untimeliness of its submission. E.g., Colorado Radio Corp. v. FCC, 118 F.2d 24 (1941), affirming the Commission's rejection of late-filed evidence which could have been submitted earlier, stating:

> Appellant took its chance that the Commission, on the existing record, would revert to its previous decision although it had been set aside. Now that the decision has gone against it, the appellant wants a chance to persuade the Commission with a supplemental record. We cannot allow the appellant to sit back and hope that a decision will be in its favor and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were followed.

118 F.2d at 26; also, Guinan v. FCC, 297 F.2d 782 (1961), affirming the Commission stating:

> Appellant does not offer newly discovered evidence but, rather, evidence easily discoverable initially, and apparently only now deemed crucial by appellant when seen from the highland of hindsight. [emphasis in original]

297 F.2d at 787.

41. With regard to the transcript of the Commission meeting, the motion at 7 states "...Trinity managed to locate the videotape of the open meeting on December 19, 1984..." The date is not a typo. The open meeting to which reference is made was in 1984, twelve years ago. The way to "locate" the transcription of a Commission meeting was not then, nor is it now, a mystery. One asks for it. The pertinent FCC rule, entitled "Transcript, recording or minutes; availability to the public," provides:

> Copies of transcripts may be obtained from the duplicating contractor pursuant to §0.465(a). There will be no search or transcription fee. Requests for inspection or copies of transcripts shall specify the date of the meeting, the name

> of the agenda and the agenda item number; this information will appear in the notice of the meeting. Pursuant to §0.465(c)(3), the Commission will make copies of the transcript available directly, free of charge, if it serves the financial or regulatory interests of the United States.

47 C.F.R. §0.607(b).

42. The December 19, 1984 meeting related to adoption of multiple ownership rules containing a minority incentive provision of which Trinity has taken advantage and concerning which Trinity claims immunity from the de facto control laws. Trinity has been aware of the significance of this provision since before this case was designated for hearing. Trinity had advanced its "de facto immunity" argument in the request of its NMTV for a declaratory ruling dated November 18, 1991 at 16-33 and in Trinity's opposition to petitions to deny filed in the instant proceeding, dated February 21, 1992, at 14-16. Trinity was aware of the significance of its "de facto immunity" argument when Trinity's case was presented at the hearing (in December 1993) where Mr. Crouch and communications counsel testified on the subject. The argument was presented in Trinity's proposed findings and conclusions filed with Judge Chachkin on August 15, 1994 at ¶¶5-236, ¶¶590-680. And, it was presented in Trinity's exceptions to the Judge's decision dated January 23, 1996 at 1-14.

43. Thus, to the extent Trinity believes the transcription of the Commission meeting has any added significance, which it doesn't, the need for the transcription should readily have been foreseen in preparation for the hearing, the transcription was

readily available under published FCC regulations and Trinity has not, nor can it, demonstrate that it acted with any measure of diligence in bringing the transcription up at this eleventh hour.

44. With regard to the statement of Mr. Glasser, the motion is equally devoid of explanation of Trinity's failure to elicit his statement in a timely way for evidentiary consideration at the hearing. The motion at 5 states "...Trinity contacted Glasser (now retired from the Commission) to get his first-hand account of his discussions with [counsel]." Mr. Glasser currently resides in New Mexico, some distance away, whereas at the time of the trial, his office was located at 1919 M Street. As in the case of the Commission meeting transcription, the Commission's rules made provision for how to obtain a statement from Mr. Glasser. That provision is:

> Commission personnel may not be questioned by deposition for the purposes of discovery except on special order of the Commission, but may be questioned by written interrogatories under §1.323. Interrogatories shall be served on the appropriate Bureau Chief (see §1.21(b)). They will be answered and signed by those personnel with knowledge of the facts. The answers will be served by the Secretary of the Commission upon parties to the proceeding.

47 C.F.R. §1.311(b)(2).

45. The subject of Mr. Glasser's statement is his dialogue with Trinity's counsel nine years ago in 1987 relative to the Odessa application. The relevance of that was long known to Trinity. The request of its NMTV for declaratory ruling dated November 18, 1991 at 9-10 relied on the staff's request for and acceptance of the materials supplied in its 1987 Odessa application. Trinity's opposition to petitions to deny filed in

the instant proceeding, dated February 21, 1992, incorporated the request for declaratory ruling and, at 5 and 8, relied on disclosures made in the 1987 Odessa application and the staff's acceptance of the application following receipt of those disclosures. Trinity was aware of the significance of this when its counsel testified at the hearing (in December 1993) regarding his dialogue with Mr. Glasser back in 1987. TBF Ex. 105 at 15-17 (¶¶24-26); Tr. 3231-41. That testimony was the subject of Trinity's proposed findings and conclusions filed August 15, 1994 at ¶¶259-260, 665. And, it was presented in Trinity's exceptions to the Judge's decision dated January 23, 1995 at 15.

46. Thus, to the extent Trinity believes Mr. Glasser's statement has any added significance, which it doesn't, the need for his statement should readily have been foreseen in preparation for the hearing, the statement was readily available under interrogatory procedures set forth in published FCC regulations and Trinity has not, nor can it, demonstrate that it acted with any measure of diligence in bringing the statement up at this eleventh hour.

47. Accordingly, with regard to both the Commission meeting transcription and the statement of Mr. Glasser, Trinity has not made <u>any</u> good cause showing, let alone a strong one. It purports to rely on surprise at a change in the position of trial counsel for the Mass Media Bureau which caused it to go looking for this evidence of ancient events "in an effort to fathom" Bureau counsel's actions. Which is nonsense. The instant motion is the

fifth time Trinity has made the arguments to which these items would have had relevance in the view of Trinity. Trial counsel for the Bureau is an advocate, not a decision-maker. The full Commission rejected Trinity's arguments which had been set forth repeatedly and with great verbosity. So did Judge Chachkin. Trinity is raising anything it can think of in the face of adversity in this litigation, which is not good cause to encumber the record with these two items, each a decade old.

48. The Commission should reject the meeting transcription and Glasser declaration as hopelessly untimely without justification, and deny or dismiss the motion which is premised on those documents.

VI.
Wrongful effort to use transcription of Commission meeting

49. One of the two centerpieces of the motion is the transcription of statements made by Commissioner Patrick and Chairman Fowler at a Commission meeting held December 19, 1984. It is mentioned in the Summary at iv, v and vi and in the text at 1, 7, 8, 9, 10, 36, 37, 38, 58, 59, 75, 78, 79 and 80. It is called "dramatic new information," text at 1, and argued with great enthusiasm as warranting the immediate cessation of the proceeding. It also contaminates Trinity's motion.

50. Nearly 20 years ago the Commission put to rest the use of statements made by Commissioners in the collegiality of discussion at Commission meetings, saying:

> Petitioner alleges that statements made at the Commission meeting of April 28, 1977, at which petitioner's counsel was

> present, indicate that the Commission's staff intended that the action taken against Station WZYQ-FM be only an admonition, not a short-term license renewal, and that Chairman Wiley and Commissioner Quello approved of the Commission letter only on that basis. Whatever might have been counsel's interpretation of the tenor of the Commission's discussion, the binding resolution of the matter is reflected only in the official document (FCC 77-305) released by the Secretary and we affirm that disposition in this Memorandum Opinion and Order. Moreover, we would like to take this opportunity to note that while full, frank and open discussion among Commissioners and the staff occurs on many agenda items prior to a vote on a course of action, we believe that the content of these discussions, coming as it does during the decision making process, does not serve as a firm ground upon which to base a petition for reconsideration and that such petitions should be based upon the contents of the document the Commission is being asked to review. [emphasis supplied]

Musical Heights, Inc., 41 RR2d 743, 744-45 (1977).

51. Three years later the Commission, member Washburn dissenting, referred to the practice of filing documents based upon discussions at Commission meetings, stating:

> In connection with this growing practice, we stress several points. First, in the course of discussion of matters at Commission meetings, many thoughts and ideas are espoused solely for dialectical purposes and do not necessarily represent the final views of a decision-maker. Thus comments and communications addressed to comments made by Commissioners and staff members at open meetings are often misdirected or ill-founded.

Sunshine Meetings, 48 RR2d 315 (1980).

52. In that order, the Commission adopted the following rules:

> ...pleadings based upon comments or discussions at open meetings, as a general rule, will not become part of the official record, will receive no consideration, and no further action by the Commission will be taken thereon.
>
> ...
>
> Deliberations, discussions, comments or observations made during the course of open meetings do not themselves

> constitute action of the Commission. Comments made by Commissioners may be advanced for purposes of discussion and may not reflect the ultimate position of a Commissioner.

47 C.F.R. §0.602(c) and (d), respectively. [emphasis supplied]

53. These rules were on the books when the Commission meeting was held on December 14, 1984 and they are on the books today. While the text of the regulation makes reference to its application "as a general rule," our research has uncovered no published opinion where the use of statements at a Commission meeting has been sanctioned as an exception to the regulation.

54. Trinity's use of comments made at the meeting -- without any acknowledgment of the rule or any effort to show that its case is unique and should be considered as the first reported exception to the rule in nearly 20 years -- is improper. Moreover, as will be shown in the following section, Trinity's disingenuous misuse of a statement by Chairman Fowler demonstrates the wisdom of the rule and its application here.

55. Pursuant to 47 C.F.R. §0.602(c), Trinity's motion in reliance on statements made in the collegiality of Commission deliberations should be given no consideration and no further action should be taken on the motion by the Commission.

VII.
Wrongful, disingenuous argument based on Chairman Fowler's statement at the meeting

56. The statement of Commissioner Patrick, motion at tab 3, is nearly three pages in length, 8-11, and is primarily devoted to Mr. Patrick's view that the multiple ownership rules should be race neutral. He stated that the government should use racial

classifications in granting or denying civil rights only in a manner which directly serves governmental interests, and questioned that minority ownership necessarily achieves the Commission's objective of diversity of viewpoints, a recurring issue in the debates over governmental preference programs in broadcasting, e.g., Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990), and in debates over such programs in other fields, e.g., Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097 (1995). In that context, Commissioner Patrick stated "No concern is given as to whether the 51% minority owners will exert any influence whatsoever on the station's programming or will have any control at all."

57. After all Commissioners had been given an opportunity to speak, Chairman Fowler commented on a statement by Commissioner Dawson and then his complete statement in response to Commissioner Patrick, which is not set forth anywhere in the motion, is this: "I do agree with Commissioner Patrick's comments. I think he is exactly right. My opinions on that are well documented and have been on the record since the lottery, which was enacted some time ago by this agency pursuant to legislation." Following this statement, Chairman Fowler concluded "Nonetheless, I will concur on that aspect in the name of preserving the greater whole or the greater good that I think derives from this action of the Commission." Tab 3 of the motion at 12-13.

58. The well-documented opinions to which Chairman Fowler

referred are set forth in his Separate Statement in Lottery Selection Among Applicants, 93 FCC2d 952, 53 RR2d 1401, 1435 (1983) (for handy reference, a copy is attached as Exhibit 1). There, Chairman Fowler voted to adopt a lottery system containing preferences for minorities, as his duty to implement the will of Congress, but expressed the view at some length that it was wrong in principle for minority preferences to be given in the grant of television low power and translator authorizations. There is nothing in those opinions which supports Trinity's argument that Chairman Fowler was agreeing with Commissioner Patrick's interpretation of whether minorities would or would not be in control of their stations under the multiple ownership rule minority incentive in question. The opinions of Mr. Fowler were devoted to the broad issue of granting television licensing preferences based on race under any circumstances, and explain his concurrence only with the broad elements of the statement of Commissioner Patrick that multiple ownership rules should not be based on racial considerations. Nothing more.

59. In order to make any argument on this score, the motion has to be disingenuous -- and is. In the Summary at iv, the motion quotes Chairman Fowler as saying that Commissioner Patrick's interpretation of the multiple ownership rule minority incentive is "exactly right." The motion gives no hint that Chairman Fowler's opinions were concerned with racial preferences in television licensing per se, and not with how any given preference program might be structured or work in practice. At 8

of the text, Chairman Fowler's statement of concurrence with Commissioner Patrick is given, with italics and bold print added, as follows: "I do agree with Commission Patrick's comments. I think he is has it **exactly right.**" Again, there is no reference to the sentence immediately following regarding Chairman Fowler's opinions which, if given, would have alerted the reader to the misuse Trinity was making of his statement. This disingenuous tactic became imbedded in the motion and was repeated mantralike, i.e., views of Commissioner Patrick "expressly shared" by Chairman Fowler, at 58-59, "shared," at 75, "expressly agreed," at 78, and the two are joined together in concluding litanies at 79 and 80.

60. When, where and how does Trinity say anything about Chairman Fowler's reference to his well-known documented opinions? Once. At page 37. And not in relationship to the mantra of a so-called concurrence with Commissioner Patrick at all. It is quoted only in relationship to the concluding statement explaining that Chairman Fowler voted for the multiple ownership rules for the overall good, etc. In sum, it was quoted only once and out of context. When, were and how does the motion apprise the reader of the content of Chairman Fowler's opinions, which would have brought all of this into fair perspective? Not once in the entire 81-page text, the eight-page summary or the 14 tabbed attachments.

61. Why would Trinity do this, i.e., quote Chairman Fowler

repeatedly to its purpose out of context, in the one place where it quotes Chairman Fowler's reference to his published opinions, avoiding placing that quote in its rightful context, and failing to discuss the contents of his published opinions at all? This had to be intentional and wouldn't have been done if putting everything in context in a straightforward way would have supported the highly dramatized argument Trinity wanted to make. By deception, Trinity converted something which was not supportive of its argument (Chairman Fowler was not endorsing its gloss on Commissioner Patrick's dissenting statement about the control which the 51% minority owners may or may not exert) into something favorable to its argument (Chairman Fowler was endorsing this gloss on Commissioner Patrick's statement). For a party whose proven lack of candor and abuse of the Commission's processes have already resulted in an adjudication that it does not have the qualifications to remain a broadcast licensee, this conduct is evidence that Trinity's aversion to good faith dealings with the Commission is still running as strong as ever.

62. Even if the meeting transcription were not excluded as grossly untimely without good cause, and even if the meeting transcription were not excluded as a violation against the use of statements by Commissioners made in the collegiality of their deliberations, the statements made on that transcription do not support the motion, which has been based on an erroneous and deceptive misreading of those statements.

VIII.
Misuse of the declaration of Mr. Glasser, which adds nothing of substance to the record

63. The second centerpiece of the entire motion is a declaration by former FCC staff member Alan Glasser. The motion cites the declaration of Mr. Glasser profusely, in the Summary at iv, v and vi and in the text at 1, 3, 4, 5, 6, 7, 59, 64 and 67, calling it "dramatic new information" warranting the Commission to immediately abort the proceedings altogether. All of which earns Trinity a place under the category for "hyperbole" in the Guiness Book of Records.

64. Attached for handy reference as Exhibit 2 is the declaration of Mr. Glasser appended to Trinity's motion. Attached for handy comparison as Exhibit 3 is a copy of the testimony of Trinity's counsel in the record regarding his dealings with Mr. Glasser and Mr. Stewart relative to the Odessa application filed by Trinity's NMTV in 1987.

65. The testimony of counsel for Trinity indicates that he advised Mr. Glasser that Mrs. Duff was an employee of Trinity, that Trinity was going to provide programming (but not details such as the nature of the affiliation agreement with Trinity), that Trinity loans were the basis for the financial certification (but not details such as the informal open account nature of the loans) and that Mr. Crouch was an officer and director of both Trinity and NMTV. The declaration of Mr. Glasser confirms that counsel was responsive in furnishing such information. The testimony of counsel indicates that Mr. Stewart asked that

organizational documents of NMTV be provided. The declaration of Mr. Glasser confirms this as well.

66. There is no controversy in the record as to these matters, for which Mr. Glasser's confirmation is not a substantive addition to the record. The motion, however, misuses the Glasser declaration as supporting its contention that the minority incentive in question was an "exception" to the de facto control laws. At 7 the motion states "In short, we now learn, the Bureau applied the minority ownership exception in 1987 exactly the same way May understood it!" [emphasis in the original]. Nothing could be further from the truth.

67. While Trinity's counsel may have been responsive to requests for information that Mr. Glasser made, what Trinity's counsel did not disclose to Mr. Glasser, or Mr. Stewart, was that Trinity believed it was immune from the de facto control laws under a so-called "minority exemption" in the multiple ownership rules. Nor did counsel disclose to Mr. Glasser, or Mr. Stewart, any of the overwhelming details by which Trinity was going to operate NMTV as a division of its own religious mission and was going to manage, direct and control NMTV lock, stock and barrel as adjudicated by Judge Chachkin, whose conclusions are set forth in ¶¶7-28 supra. This is crystal clear from both counsel's testimony (Exhibit 3) and Mr. Glasser's declaration (Exhibit 2), as neither describes any such dialogue in their testimony or declaration which was given in a context where they would have described it if such a dialogue had taken place.

68. If Trinity really believed that the minority incentive was an "exception" to the de facto control laws, as it now claims, it was incumbent upon Trinity's counsel to disclose their theory. That would have been acting in good faith. If Trinity really knew what it was doing would never pass muster, it would have acted precisely as it did. The failure of Trinity and its counsel to pose to the staff any such theory of a "minority exemption" before assaulting the de facto control laws into oblivion on their own initiative lies at the heart of Trinity's lack of candor and manipulation of the process.

69. While Mr. Glasser may have wanted to probe further, and while Mr. Stewart decided the inquiry should be restricted to a review of the organizational documents, it was not incumbent upon either of them to have the prescience to know what Trinity had in mind for NMTV or to volunteer a tutorial on the subject of compliance with the de facto control laws. To the contrary, Messrs. Glasser and Stewart were entitled to expect good faith compliance with the communications laws by this applicant and its counsel, as the staff is entitled to expect such good faith compliance by all applicants and their counsel.

70. The actions of Messrs. Glasser and Stewart in processing the Odessa application could not have been interpreted by counsel or client in good conscience as an invitation to do what Trinity did with NMTV here. The actions of Messrs. Glasser and Stewart did not mislead or entrap Trinity or its counsel in any way. By failing to make a candid disclosure of what it

planned to do, Trinity misled them and cannot now be heard to blame any perceived lack of concern on the part of the FCC staff as sub silentio abrogation of Section 310 of the Act and three quarters of a century of consistent interpretation and

telecommunications. Among other things, the Commission has, or has had, regulatory programs to promote fair employment practices, Non-Discrimination in Employment Practices, 13 FCC2d 766, 13 RR2d 1645 (1968), 18 FCC2d 240, 16 RR2d 1561 (1969); to

programs and policies to redress the effects of discrimination, i.e., fair employment practices, tax certificates, distress sales, and policy statement to stimulate interest in funding minority projects. Some have been at the initiative of Congress, i.e., lottery and auction preferences. One has been at the

the two minority programs in question here.

A.
The lottery preference
(motion at 18-30)

75. When Congress amended the Communications Act to provide for a lottery mechanism for awarding LPTV and translator authorizations with a provision for upgrading the chances for selection of a party having a minority background or a party without other broadcast interests, it made clear that a meaningful increase in such minority and other participation in broadcasting was intended. The statutory language, like that in Section 310(d), speaks in terms of "control":

> To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.

Public Law 97-259 - September 13, 1982, 96 Stat. 1087, codified in 47 U.S.C. §309(i)(3)(A).

76. The Conference Report discussed the need for increasing minority participation as well as awarding a preference for parties who did not have other media interests at some length and was abundantly clear that meaningful participation was intended. H.R. Rep. No. 795, 97th Cong., 2d Sess. (1982) at 41-46. For example:

Ibid. at 43. Also:

> One means of remedying the past economic disadvantage to minorities which has limited their entry into various sectors of the economy, including the media of mass communications, while promoting the primary communications policy objective of achieving a greater diversification of the media of mass communications, is to provide that a significant preference be awarded to minority-controlled applicants in the FCC licensing proceedings for the media of mass communications.

Ibid. at 44. Also:

> With respect to both the media ownership and minority ownership preferences, the Conferees expect that the Commission shall evaluate ownership in terms of the beneficial owners of the corporation, or the partners in the case of a partnership. Similarly, trusts will be evaluated in terms of the identity of the beneficiary.

Ib. at 45. This passage is followed by:

> The Conferees expect that the preferences which will be awarded in the administration of a lottery will result in a real and substantial increase in the diversity of ownership in the media of mass communications and consequent diversification of media viewpoints [emphasis supplied].

Id.

77. The conference report directed the Commission to guard against quick transfers of licenses won in the lottery "...to help ensure that the very purposes sought to be achieved by the preference scheme be fulfilled..." and it stated:

> "...the Commission should require that the applicant that is actually awarded the license certifies that they have not entered into any agreement, explicit or implicit, to transfer to another party after a period of time any station construction permit or license awarded.

Id. at 45-46.

78. In implementing the new statute and filling a void in the Conference Report, the Commission indicated that it would follow its traditional governance approach for nonstock companies

by looking to the composition of the board (or membership) in determining eligibility for the lottery preferences. Lottery Selection Among Applicants, 93 FCC2d 952, 53 RR2d 1401, 1420-21 (¶68) (1983). This action was reasonably contemporaneous with the Commission's decisions in the University of Pennsylvania (1978) and Southwest Texas (1981) cases making it crystal clear that the de facto control law applied to a nonstock entity governed by a board of directors.

79. The Commission understood the clear import of the will of Congress to guard against perversions of a real and meaningful preference for minorities and parties without other broadcasting interests, stating:

> All applicants should be aware that improper preference claims violate Federal law. 18 U.S.C. §1001. Additionally, evidence of such claims could place in jeopardy all Commission authorizations then held by the wrongdoer, as well a adversely affecting the grant of any further authorizations.

Lottery Selection Among Applicants, 53 RR2d at 1414 (¶43).

80. As directed in the Conference Report, the Commission modified the LPTV and translator application to require what it called a "Real Party in Interest Certification" in which lottery parties certify "that the applicant is the real party in interest and that no agreement, either explicit or implicit, has been made to transfer or assign the license at a later date to any other party." Id. at 1418 (¶55). The application form, as actually changed and signed by NMTV, captioned the certification "REAL PARTY IN INTEREST CERTIFICATION" and in lower case stated "The applicant certifies that no agreement, either explicit or

implicit, has been entered into for the purposes of transferring or assigning to another party, any station construction permit or license or interest therein that is awarded as a result of a random selection or lottery." [emphasis supplied]. TBF Exhibit 105, Tabs I and H.

81. In response to comments proposing that applicants document the basis for their certifications, the Commission repeated the responsibility to submit true and correct real-party-in-interest certifications:

> To require that all applicants submit the specific factual information underlying their certifications, as proposed by such parties as Youth News, would impose a mammoth paperwork burden upon applicants and the Commission, without balancing public interest benefit. Applicants who submit false information will, as we have indicated above with regard to preference claims, be subject to substantial penalties.

53 RR2d at 1417 (¶52).

82. No reasonable person could have misunderstood this law, in genuine innocence, as:

(a) abrogating the unbroken national communications policy dating back to 1927 against de facto control of a broadcast station;

(b) allowing Trinity to honestly claim a minority preference for its applications filed in the name of NMTV;

(c) allowing Trinity to honestly claim a diversity preference because its NMTV did not have other broadcast interests;

(d) allowing Trinity to honestly claim that long-time Trinity employee Ms. Duff and the other minority NMTV directors